

employer must prepare, sign, and date a written recruitment report. The recruitment report must be submitted with the *Application for Temporary Employment Certification*. The recruitment report must:

- (i) List the original number of openings for which the employer recruited;
- (ii) Identify each recruitment source by name;
- (iii) State the name and contact information of each U.S. worker who applied or was referred to the job opportunity up to the date of the preparation of the recruitment report, and the disposition of each worker;
- (iv) Confirm that former employees were contacted and by what means; and
- (v) If applicable, explain the lawful job-related reason(s) for not hiring any U.S. workers who applied for the position.

(2) The employer must update the recruitment report within 48 hours of the date that is the end of the recruitment period as specified in § 655.102(f)(3). This supplement to the recruitment report must meet the requirements of paragraph (k)(1) of this section. The employer must sign and date this supplement to the recruitment report and retain it for a period of no less than 3 years. The supplement to the recruitment report must be provided in the event of an audit.

(3) The employer must retain resumes (if provided) of, and evidence of contact with (which may be in the form of an attestation), each U.S. worker who applied or was referred to the job opportunity. Such resumes and evidence of contact must be retained along with the recruitment report and the supplemental recruitment report for a period of no less than 3 years, and must be provided in response to a Notice of Deficiency or in the event of an audit.

§ 655.1303 Advertising requirements.

All advertising conducted to satisfy the required recruitment steps under § 655.102 before filing the *Application for Temporary Employment Certification* must meet the requirements set forth in this section and at § 655.104 and must contain terms and conditions of employment which are not less favorable

than those that will be offered to the H-2A workers. All advertising must contain the following information:

(a) The employer's name and location(s) of work, or in the event that a master application will be filed by an association, a statement indicating that the name and location of each member of the association can be obtained from the SWA of the State in which the advertisement is run;

(b) The geographic area(s) of employment with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the services or labor;

(c) A description of the job opportunity for which certification is sought with sufficient information to apprise U.S. workers of services or labor to be performed and the anticipated period of employment of the job opportunity;

(d) The wage offer, or in the event that there are multiple wage offers (such as where a master application will be filed by an association and/or where there are multiple crop activities for a single employer), the range of applicable wage offers and, where a master application will be filed by an association, a statement indicating that the rate(s) applicable to each employer can be obtained from the SWA;

(e) The three-fourths guarantee specified in § 655.104(i);

(f) If applicable, a statement that work tools, supplies, and equipment will be provided at no cost to the worker;

(g) A statement that housing will be made available at no cost to workers, including U.S. workers, who cannot reasonably return to their permanent residence at the end of each working day;

(h) If applicable, a statement that transportation and subsistence expenses to the worksite will be provided by the employer;

(i) A statement that the position is temporary and a specification of the total number of job openings the employer intends to fill;

(j) A statement directing applicants to report or send resumes to the SWA of the State in which the advertisement is run for referral to the employer;

(k) Contact information for the applicable SWA and the job order number.

§ 655.1304 Contents of job offers.

(a) *Preferential treatment of aliens prohibited.* The employer's job offer must offer to U.S. workers no less than the same benefits, wages, and working conditions that the employer is offering, intends to offer, or will provide to H-2A workers. Except where otherwise permitted under this section, no job offer may impose on U.S. workers any restrictions or obligations that will not be imposed on the employer's H-2A workers.

(b) *Job qualifications.* Each job qualification listed in the job offer must not substantially deviate from the normal and accepted qualifications required by employers that do not use H-2A workers in the same or comparable occupations and crops.

(c) *Minimum benefits, wages, and working conditions.* Every job offer accompanying an H-2A application must include each of the minimum benefit, wage, and working condition provisions listed in paragraphs (d) through (q) of this section.

(d) *Housing—(1) Obligation to provide housing.* The employer must provide housing at no cost to the worker, except for those U.S. workers who are reasonably able to return to their permanent residence at the end of the work day. Housing must be provided through one of the following means:

(i) *Employer-provided housing.* Employer-provided housing that meets the full set of DOL OSHA standards set forth at 29 CFR 1910.142, or the full set of standards at §§ 654.404 through 654.417 of this chapter, whichever are applicable under § 654.401; or

(ii) *Rental and/or public accommodations.* Rental or public accommodations or other substantially similar class of habitation that meets applicable local standards for such housing. In the absence of applicable local standards, State standards will apply. In the absence of applicable local or State standards, DOL OSHA standards at 29 CFR 1910.142 will apply. Any charges for rental housing must be paid directly by the employer to the owner or operator of the housing. The employer

must document that the housing complies with the local, State, or Federal housing standards. Such documentation may include but is not limited to a certificate from a State Department of Health or other State or local agency or a statement from the manager or owner of the housing.

(2) *Standards for range housing.* Housing for workers principally engaged in the range production of livestock shall meet standards of DOL OSHA for such housing. In the absence of such standards, range housing for sheepherders and other workers engaged in the range production of livestock must meet guidelines issued by ETA.

(3) *Deposit charges.* Charges in the form of deposits for bedding or other similar incidentals related to housing must not be levied upon workers. However, employers may require workers to reimburse them for damage caused to housing, bedding, or other property by the individual workers found to have been responsible for damage which is not the result of normal wear and tear related to habitation.

(4) *Charges for public housing.* If public housing provided for migrant agricultural workers under the auspices of a local, county, or State government is secured by the employer, the employer must pay any charges normally required for use of the public housing units (but need not pay for optional, extra services) directly to the housing's management.

(5) *Family housing.* When it is the prevailing practice in the area of intended employment and the occupation to provide family housing, family housing must be provided to workers with families who request it.

(6) *Housing inspection.* In order to ensure that the housing provided by an employer under this section meets the relevant standard:

(i) An employer must make the required attestation, which may include an attestation that the employer is complying with the procedures set forth in § 654.403, at the time of filing the *Application for Temporary Employment Certification* pursuant to § 655.105(e)(2).

(ii) The employer must make a request to the SWA for a housing inspection no less than 60 days before the